

SENATE BILL REPORT

ESHB 1441

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, March 19, 2009

Title: An act relating to the contractual relationships between distributors and producers of malt beverages.

Brief Description: Concerning the contractual relationships between distributors and producers of malt beverages.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Condotta, Armstrong, White and Eddy).

Brief History: Passed House: 3/05/09, 97-0.

Committee Activity: Labor, Commerce & Consumer Protection: 3/19/09 [DP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist, Ranking Minority Member; Franklin, Honeyford, King and Kline.

Staff: Mac Nicholson (786-7445)

Background: Distributors and suppliers of malt beverages are regulated under both state liquor laws and Chapter 19.126 RCW. State liquor laws regulate the general production, distribution, sale, and consumption of alcohol in the state, whereas Chapter 19.126 RCW regulates the specific relationship between malt beverage producers, or suppliers, and distributors.

Under Chapter 19.126 RCW, suppliers and distributors are entitled to certain protections which must be incorporated into written agreements of distributorship. A supplier is defined as any malt beverage importer or manufacturer who produces more than 50,000 barrels annually. Current law lists specific processes for terminating or cancelling agreements, establishes compensation entitlements when agreements are terminated or cancelled, and delineates reasons for termination or cancellation that would not trigger compensation entitlements.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Cancellation or Termination of the Agreement. A supplier must give 60 days notice of cancellation or termination to a distributor and give the distributor time to cure any claimed deficiency. The supplier can dispense with the 60-day notice and cure provision if the termination or cancellation is due to one of the reasons specified in statute, including insolvency, bankruptcy, and license suspension or revocation.

Compensation Entitlements. A supplier who cancels or terminates an agreement with a distributor must compensate the distributor unless the cancellation or termination was (1) for cause; (2) for failure to live up to the terms and conditions of the agreement; or (3) for one of the reasons specified in statute, which include insolvency, bankruptcy, and license suspension or revocation.

Type of Compensation. A distributor entitled to compensation from a supplier is entitled to the laid-in cost of inventory and liquidated damages. Liquidated damages refers to the amount of money agreed to by the parties in the agreement that is paid to one party or the other when the agreement is breached.

Summary of Bill: Definitions. New terms are defined, including terminated distributor, successor distributor, terminated distribution rights, and brand. A terminated distributor is a distributor whose agreement of distributorship has been terminated, cancelled, or not renewed. A successor distributor is a distributor who enters into an agreement with a supplier who terminated, cancelled, or failed to renew an agreement with a previous distributor to distribute the same brand of malt beverages. Terminated distribution rights are distribution rights that are lost by a terminated distributor as a result of termination, cancellation, or nonrenewal of an agreement of distributorship. Brand means any word, name, group of letters, or symbol adopted and used by a supplier to identify a specific malt beverage product and to distinguish that product from other malt beverages.

The production threshold for excluding malt liquor manufacturers from the definition of "supplier" is changed from 50,000 barrels annually to 200,000 barrels annually.

Cancellation or Termination of Agreement. Two additional reasons for cancellation or termination without notice are provided, one which triggers compensation entitlements and one that does not. A supplier can cancel or terminate the agreement without notice and without triggering the compensation entitlement if there is fraudulent conduct in any of the distributor's dealings with the supplier or its products. A supplier can cancel or terminate the agreement without notice if the termination results from a supplier acquiring the right to manufacture or distribute a particular brand and opting to have that brand distributed by a different distributor. In such cases, the termination would trigger the compensation entitlement.

Termination, cancellation, or nonrenewal of a distributor's right to distribute a particular brand by a supplier is termination, cancellation, or nonrenewal of the entire agreement of distributorship, regardless of whether the distributor retains the right to distribute other brands for the supplier.

If a supplier terminates an agreement because the supplier acquired the right to brew or distribute a particular brand and elects to have that brand handled by a different distributor,

the distribution rights will not transfer until the terminated distributor has been compensated, either by agreement of the parties or by arbitration.

Compensation Entitlements. Actions taken by the supplier that trigger distributor compensation entitlements are changed to include nonrenewal of the agreement as well as cancellation and termination.

When a terminated distributor is entitled to compensation, any successor distributor must compensate the terminated distributor for the fair market value of the distribution rights, less any amount paid by the supplier or other person. When there are multiple successor distributors, each successor must compensate for only that part of the distribution rights assumed by the successor. If the terminated distributor and the successor distributor can't agree on fair market value within 30 days, the issue must be submitted to binding arbitration. Unless the parties otherwise agree, notice of arbitration must be served within 40 days after termination of the distribution rights, arbitration must be conducted within 90 days after notice, and an order must be issued within 30 days after completion of the arbitration.

Type of Compensation. Part of the compensation a distributor is entitled to for cancellation, termination, or nonrenewal of an agreement is changed from liquidated damages to the fair market value of the terminated distribution rights. Fair market value is the amount a buyer would pay a seller for the distribution rights and is determined using the date the distribution rights are to be transferred.

General. Rather than requiring that specific protections be incorporated into agreements of distributorships, the protections are deemed to be incorporated.

If there is a material change in an agreement, the revised agreement will be considered a new agreement when determining the law applicable to the agreement.

A prevailing party in arbitration for something other than determination of compensation due a terminated distributor is entitled to reasonable attorneys fees and costs. A person seeking a determination of compensation due a terminated distributor may not bring a civil action in court.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill deals with the restructuring that is happening in the beer industry and how that restructuring affects distributors. Distributors invest lots of money in building their business, and the bill defines what happens when brewers terminate relationships with distributors and how issues between them are mediated.

This bill is identical to the version that passed the Senate, and the kinks have been worked out.

Persons Testifying: PRO: Representative Conway, prime sponsor; Ron Main, Washington Beer and Wine Wholesalers.